

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Extreme Telecom, Inc.,

Complainant,

vs.

Case 05-04-013

Pacific Bell Telephone Company, dba SBC  
California and SBC Advanced Solutions, Inc.,

Defendants.

**SCOPING MEMO AND RULING OF  
ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

**Summary**

This ruling and scoping memo (Scoping Memo) confirms certain rulings made at the June 29, 2005 prehearing conference (PHC). The ruling sets forth the schedule and issues, and addresses other procedural requirements.

**Schedule**

<b>Event</b>	<b>Schedule</b>
Joint status report on mediation/settlement efforts	8/5/05
Opening testimony due	8/26/05
Reply testimony due	9/16/05
Discovery cutoff (all responses served, depositions completed, motions heard)	9/30/05

Hearing	10/21/05, 9 a.m.-4 p.m. in San Francisco hearing rooms
Post hearing opening briefs due	11/8/05
Post hearing reply briefs due	11/18/05

Our goal is to resolve this case as soon as possible. We anticipate that the resolution will not exceed 12 months from the date of filing the complaints, pursuant to Pub. Util. Code § 1701.2(d).<sup>1</sup>

### **Scope of the Proceeding**

The scope of the proceeding is defined by the complaint. In summary, the major issues presented are as follows: Should Pacific Bell or its affiliate, Advanced Solutions, Inc. (ASI) offer “XML” service to Extreme DSL? Is any defendant already offering such a service to its affiliates? Does the Commission have jurisdiction to decide these issues and/or order any defendant to provide the requested service to complainant?

### **Category of Proceeding**

This proceeding is categorized as adjudicatory, and hearings are necessary. The parties are engaged in mediation efforts with a separate Administrative Law Judge. Depending on the outcome of mediation, the case may settle and the foregoing scheduled events may not be necessary.

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<sup>1</sup> Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

### **Presiding Officer**

Pursuant to Rule 6(c), Assigned Commissioner Grueneich designates ALJ Thomas as the presiding officer.

### **Hearing Room Ground Rules**

Parties shall follow the Hearing Room Ground Rules (Appendix A) regarding hearing process, exhibits, and cross-examination.

### **Service List**

The service list for this proceeding is on the Commission's website at [http://www.cpuc.ca.gov/published/service\\_lists/C0504013\\_69006.htm](http://www.cpuc.ca.gov/published/service_lists/C0504013_69006.htm). Parties are requested to serve everyone, whether characterized as "appearance," "state service," or "information only," with all pleadings, prepared testimony, etc. All documents shall be served by email, where an email address is given, and by regular mail.

### **Communications With Decision Makers (Ex Parte Communication)**

Pursuant to Pub. Util. Code § 1701.2(b), *ex parte* communications are prohibited in this proceeding. For example, a party or any other person who has a financial interest in this proceeding is prohibited from speaking with a decision maker on a substantive issue in this case. (*See* Pub. Util. Code §§ 1701.1, 1701.2, and Rules 7 and 7.1 of the Commission's Rules of Practice and Procedure for specific rules on ex parte communications.)

### **Discovery Disputes**

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they should first raise these disputes with ALJ Thomas orally, at (415) 703-2310. She will then instruct the parties how to proceed.

**IT IS RULED** that:

1. The schedule and scope of this case are as set forth in this Scoping Memo, unless subsequently modified by Assigned Commissioner or Administrative Law Judge (ALJ) directive.
2. ALJ Thomas is the presiding officer in this proceeding.
3. The service list for this proceeding is on the Commission's website at [http://www.cpuc.ca.gov/published/service\\_lists/C0504013\\_69006.htm](http://www.cpuc.ca.gov/published/service_lists/C0504013_69006.htm). Parties shall serve everyone on the service list, and shall serve their documents by both email, where an email address is given, and by regular mail.
4. Parties shall follow the instructions in Appendix A regarding Hearing Room Ground Rules.
5. Pursuant to Pub. Util. Code § 1701.2(b), *ex parte* communications are prohibited.
6. Parties shall first contact ALJ Thomas regarding discovery disputes, and then follow any procedure she outlines thereafter.

Dated August 3, 2005, at San Francisco, California.

/s/ DIAN GRUENEICH

Dian Grueneich  
Assigned Commissioner

/s/ SARAH R.THOMAS

Sarah R. Thomas  
Administrative Law Judge

## **APPENDIX A**

### **HEARING ROOM GROUND RULES ALJ Sarah Thomas**

1. All prepared written testimony should be served in accordance with the Commission's e-service rules in Rule 2.3, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room.
3. The lower right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the lower right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
4. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
5. Corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
8. Parties should agree on an exhibit numbering scheme in advance of hearing. One party may use exhibits 1-100, the next party may use 101-200, and so on. All exhibits shall be pre-marked with their number and the name of the sponsoring party.

9. Confidential exhibits should bear the appropriate exhibit number and be followed by the letter "C." A redacted copy of such an exhibit shall also be provided for the public record. Thus, the confidential version of Exhibit 1 will be marked Exhibit 1-C, and the redacted (public) version of the document will be marked Exhibit 1.
10. During the hearing, the ALJ may ask one party to create a running exhibit list (with designation of the sponsoring party, the name of the document, whether exhibits are in evidence, and the date on which they were identified and received in evidence) and furnish it to the ALJ and all other parties.
11. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated August 3, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

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TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.